

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

018842.1318

First Named Inventor: Yukihiro Taguchi

Art Unit: 3746

Application Number: 10/510,340

Examiner: Patrick Hamo

Filed: October 5, 2004

Title: VARIABLE DISPLACEMENT COMPRESSOR

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☐ Small entity – fee \$ _____ (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.

☒ Other than small entity – fee \$ 510 (37 CFR 1.17(l)).

2. Reply and/or fee

A The reply and/or fee to the above-noted Office action in the form of
Responsive Amendment (Tab B) (identify the type of reply):

☐ has been filed previously on _____

☒ is enclosed herewith.

B The issue fee of \$ _____

☐ has been filed previously on _____

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

James B. Arpin

Typed or printed name

Baker Botts, LLP, 1299 Pennsylvania Ave., NW

Address

Washington DC 20004-2400

Address

December 31, 2007

Date

33470

Registration Number, if applicable

202-639-7735

Telephone Number

Enclosure ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unavoidable delay☒ Fee Transmittal For FY 2008 (Tab C)**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

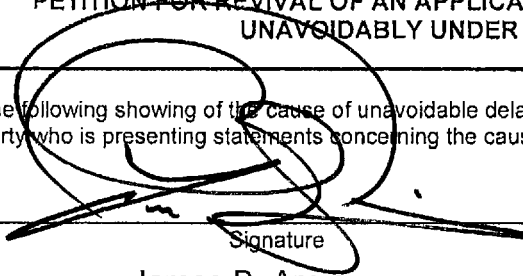
Date

Signature

Typed or printed name of person signing certificate

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
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NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

James B. Arpin

Typed or printed name

December 31, 2007

Date

33470

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

Please see attached sheets in Tab A

(Please attach additional sheets if additional space is needed.)

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

TAB A

In view of the statement set forth below, Applicant maintains that the delay in responding to the Office Action in the above-captioned patent application, of which Applicant was notified by e-mail by the U.S. Patent and Trademark Office (“PTO”) on March 16, 2007, was unavoidable. On November 15, 2006, the PTO announced the establishment of the Private PAIR Outgoing Correspondence Notification Pilot Program. Under this Pilot Program, the PTO would notify voluntary participants of PTO Correspondence addressed to their Customer Number address via e-mail. Participants then would download such PTO Correspondence. According to the Private PAIR Participants Guidelines (December 16, 2006 - June 15, 2007), “[p]articipants are urged to view or download their Office action within 7 calendar days of receipt of email notification. Failing to do so will trigger the USPTO to send participants courtesy postcards as a reminder. The mailing of courtesy postcards will not reset the date of commencement for the shortened statutory period of response.” (copy enclosed; emphasis added)

Applicant’s representative is a Private PAIR Customer, was a participant in the PTO’s e-Filing Forum, and was an EFS-Web Beta Participant. Applicant’s representative opted into the Pilot Program on or about December 11, 2006. On December 14, 2006, Applicant’s representative participated in the Private PAIR e-Office Action Pilot Program. Applicant’s representative’s docketing staff participated in The PAIR Feedback Questionnaire Results Event on March 27, 2007. The staff member in charge of Applicant’s representative’s docketing staff has more than eight (8) years of experience with Applicant’s representative as a patent secretary and a docketing staff member. Applicant’s representative and its docketing staff are experienced and trained in PTO’s electronic filing and monitoring procedures and each member of Applicant’s representative’s docketing staff has been trained formally in-house within Applicant’s representative’s firm on docketing procedures.

On March 16, 2007, the PTO notified Applicant’s representative of five (5) pieces of PTO Correspondence via e-mail. (Redacted copy enclosed.) Applicant’s representative’s docketing staff downloaded four (4) of the five (5) pieces of PTO Correspondence, but, due to an error on the part of a docketing staff member in the performance of this clerical function, the docketing staff failed to download the Office Action for the above-captioned patent application. According to the Transaction History from PAIR (copy enclosed), the PTO mailed a single,

postcard reminder to Applicant's representative. When such postcard reminders are received, Applicant's representatives docketing staff download or confirm that they have downloaded the PTO Correspondence and make and initial an annotation on the postcard reminder confirming the action taken. Applicant's representative does not have a postcard reminder relating to the Office Action for the above-captioned patent application or any indication that Applicant's representative received such a postcard reminder. Because the docketing staff failed to download the Office Action in response to the initial notification, and, in the absence of a postcard reminder, the docketing staff did not enter the deadlines for responding to the Office Action in Applicant's representative's computer docketing system (copy enclosed) or on a back-up docketing calendar. According to the Transaction History from PAIR, the PTO notified Applicant's representative of the Notice of Abandonment on December 4, 2007. Nevertheless, in response to a Status Inquiry by Applicant's representative, the PTO advised Applicant's representative on January 27, 2006, that Applicant would "receive an Office action in approximately 21 months," i.e., by "approximately" October of 2007. (Copy enclosed.) Thus, Applicant's representative did not expect to receive an Office Action in the above-captioned patent application before the date on which the application became abandoned.

After Applicant's representative downloaded the Notice of Abandonment on December 4, 2007, it immediately located and downloaded the missed Office Action. Applicant's representative analyzed the Office Action and the cited references, and reported the Office Action on December 10, 2007. Applicant's representative received instructions to reply to the Office Action and to file a petition for revival of the application. Thus, despite the Christmas holidays, Applicant's representative has prepared and filed a petition for revival of the application and a reply to the Office Action within one (1) month of receipt of the Notice of Abandonment. Therefore, Applicant's representative acted diligently upon receiving the Notice of Abandonment, and Applicant maintains that the entire delay in the filing of the reply from the due date of the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a), was unavoidable.

In accordance with MPEP 711.03(c)(II)(C)(2),

[a] delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of ‘unavoidable’ delay, provided it is shown that:

(A) the error was the cause of the delay at issue;

(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and

(C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

Applicant maintains that the clerical error in failing to download the PTO Correspondence in response to the e-mail notification caused the delay at issue and that there was a business routine in place for performing the clerical function, including the review of postcard reminders, that could reasonably be relied upon to avoid such clerical errors. Further, although this was a Pilot Program and had been in existence for only three (3) months at the time of the error, Applicant maintains that Applicant’s representative’s docketing staff members were sufficiently trained and experienced to with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

In accordance with MPEP 711.03(c)(II), Applicant is enclosing a reply to the outstanding Office Action, and Applicant’s representative hereby authorizes the PTO to charge the petition fee set forth in 37 C.F.R. § 1.17(l) and any additional fees required by the submission of this petition and the reply, including, but not limited to, any fees for the extension of time to respond, to the undersigned’s **Deposit Account No. 02-0375**. In addition, Applicant maintains that the foregoing statement demonstrates that the entire delay in the filing of the reply from the due date of the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a), was unavoidable. Further, because Applicant filed the above-captioned utility patent application on October 5, 2004, i.e., after June 8, 1995, Applicant is not required to submit a terminal disclaimer under 37 C.F.R. § 1.137(d). Therefore, Applicant respectfully requests that the PTO grant this petition for revival of the above-captioned patent application and that the Examiner reconsider the application in view of the enclosed reply.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

Private PAIR Pilot Participant Guidelines December 16, 2006 – June 15, 2007

Participant Guidelines:

The Guidelines express the understanding between Private PAIR Pilot Participants and the USPTO concerning the activities related to the testing of Electronic Outgoing Correspondence Notification henceforth referred to as e-Office Action. Participants who do not abide by these Guidelines may be removed from the Pilot program.

- Participants understand that the e-Office Action functionality used during the Pilot Program is experimental.
- Participants understand that e-Office Action is a Customer Number-based program. Only applications associated with the Customer Numbers that they have used to opt-in to e-Office Action will be able to take advantage of the new process.
- Participants are urged to opt-in and register up to three e-mail addresses for receipt of their patent application's outgoing correspondence email notification.
- Participants understand that the USPTO is not responsible for email notifications being sent to an incorrect address if the participants fail to provide the correct email address.
- Participants are aware that they do have the ability to opt-in or opt-out of the e-Office Action at anytime, but are encouraged to maintain their opt-in status during the pilot phase.
- Participants understand that once they have opted-in to receive e-Office Action given by the USPTO, they will not receive any paper Office actions for as long as they maintain the opt-in status, with the exception of Formalities Letters. Participants will continue to receive paper Formalities Letters in the mail along with email notifications during the pilot.
- Participants are urged to view or download their Office action within 7 calendar days of the receipt of email notification. Failing to do so will trigger the USPTO to send participants courtesy postcards as a reminder. The mailing of courtesy postcards will not reset the date of commencement for the shortened statutory period of response.
- Participants agree to receive training prior to and/or during the pilot.
- Participants agree to fill out and submit the "Issue Reporting Form" via email, as provided by the USPTO Private PAIR project team, to document errors, problems, or questions during the pilot period.



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- Participants agree to fill out and submit the "Pilot Program Feedback Questionnaire" form, as provided by the USPTO Private PAIR project team, to document the overall user experience during the pilot period.

Thank you for your interest in participating in this exciting activity, and for helping the USPTO achieve their goal of continued commitment to the patent filing community and government eCommerce initiatives.

Hoskins, Darlene

From: PAIR_eOfficeAction@USPTO.GOV
Sent: Friday, March 16, 2007 5:56 A M
To: USPTO Correspondence; Dav is, Onck a; darlene_hosk ins31@ msn.com
Cc: PAIR_eOfficeAction@USPTO.GOV
Subject: Private P AIR Correspondence Noti fication for Custom er Number 24735

Mar 16, 2007 05:55:52 AM

Dear PAIR Customer:

BAKER BOTTS LLPC/O INTELLECTUAL PROPERTY DEPARTMENT
THE WARNER, SUITE 1300 1299 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20004-2400
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 24735, have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

Application Attorney Docket No.

10510340 018842.1318
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To view your correspondence online or update your email addresses, please visit us anytime at
<https://sportal.uspto.gov/secure/myportal/privatepair>.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m. Eastern Standard Time (EST)

Thank you for prompt attention to this notice,

UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

10/510,340 Variable displacement compressor

12-31-
2007::11:15:25**Transaction History**

Date	Transaction Description
12-04-2007	Email Notification
11-30-2007	Mail Abandonment for Failure to Respond to Office Action
11-26-2007	Abandonment for Failure to Respond to Office Action
03-02-2005	Information Disclosure Statement considered
03-02-2005	Information Disclosure Statement (IDS) Filed
03-24-2007	Mail Post Card
03-16-2007	Email Notification
03-15-2007	Mail Non-Final Rejection
03-05-2007	Non-Final Rejection
08-23-2005	Information Disclosure Statement considered
02-04-2005	Information Disclosure Statement considered
03-01-2007	Case Docketed to Examiner in GAU
12-27-2006	Case Docketed to Examiner in GAU
05-12-2006	IFW TSS Processing by Tech Center Complete
08-23-2005	Reference capture on IDS
02-04-2005	Reference capture on IDS
12-13-2005	Miscellaneous Incoming Letter
08-23-2005	Information Disclosure Statement (IDS) Filed
08-23-2005	Information Disclosure Statement (IDS) Filed
02-04-2005	Information Disclosure Statement (IDS) Filed
02-04-2005	Information Disclosure Statement (IDS) Filed
10-05-2004	Request for Foreign Priority (Priority Papers May Be Included)
07-05-2005	Cleared by OIPE CSR
07-05-2005	Cleared by OIPE CSR
07-05-2005	Cleared by OIPE CSR
06-28-2005	Cleared by OIPE CSR
10-05-2004	371 Completion Date
06-22-2005	Application Dispatched from OIPE
06-22-2005	Notice of DO/EO Acceptance Mailed
10-05-2004	Initial Exam Team nn

[Close Window](#)

Country Application

Friday, December 28, 2007

Page: 1

Client Matter Number: 018842.1318

Country: US

SubCase:

Client: SANDEN CORPORATION

United States of America

Client Reference No:

Case Type: CON

Resp.Office: DC

Application Status: Published

Status Date:

Application Number: 10/510340

Filing Date: 05-Oct-2004

Publication Number: 2005-0214133-A1

Publication Date: 29-Sep-2005

Patent Number:

Issue Date:

Parent/PCT Number:

Parent/PCT Date : 08-Apr-2003

Parent Issue Number:

Parent Issue Date :

Tax Schedule: LE

Expiration Date:

Confirmation #:

Patent Term Adjustment: 0

Agent:

Agent Reference #:

PTO Customer Number:

Priority Number: JP03/04442

Historical Family No.:

New Family Number:

Matter:

Claims: 0

Annuity Client?: Yes

Tax Start Date:

Remarks: Filed 10-5-04

It is estimated that this application will receive an office action in approximately 21 months from 1/27/06

Country Application

Friday, December 28, 2007

Page: 2

List Of Actions

Action(s) Due	Due Date		Action Taken
Application Mailed	05-Oct-2004	Due Date	05-Oct-2004
Application Follow Up Date	05-Dec-2004	Due Date	19-Oct-2004
Declaration/power of attorney	05-Jan-2005	Due Date	05-Oct-2004
IDS Filed	04-Feb-2005	Due Date	04-Feb-2005
Supp. IDS Filed	23-Aug-2005	Due Date	23-Aug-2005
Request for Status Filed	13-Dec-2005	Due Date	13-Dec-2005
Notice of Abandonment	30-Nov-2007	Due Date	04-Dec-2007
Petition to Revive Reminder	30-Dec-2007	Reminder	
Petition to Revive Due	30-Jan-2008	Final	
Follow Up Request for Status	13-May-2008	Due Date	

Assignment History

Assignment From	Assignment To	Assignment Date	Reel	Frame
Taguchi, Yukihiro	Sanden Corporation	14-Nov-2005	016868	0043

Created By: dlallen2

User ID: DHOSKINS

Date Created: 06-Oct-2004

Last Update: 01-Feb-2006



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018842.1318

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1299 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20004-2400

RECEIVED
FEB 01 2006
BAKER BOTTS

DATE: 01/27/2006

To: Applicant of Serial Number 10510340
Filed on 05-OCT-2004
(Art Unit 3746)

DOCKETED

It is estimated that this application will receive an Office action in approximately 21 months. This is an estimate that is based on the current inventory level of applications filed in this art area and the current staffing levels in this Art Unit. The USPTO is dedicated to minimizing first action and total pendency, and we are targeting resources to help address backlogs in art areas with high new application filings. Thank you for your inquiry.

Customer Service Office in Technology Center: 3700

Phone Number: 571-272-3700
Central Fax Number: 571-273-8300

Applicant/Attorney Contact Information:

Phone Number: 212-835-1400
Fax Number:

TAB B